

**Washington State
Risk Management Task Force**

**Report to the
Governor and the Attorney General**

October 9, 2001

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Executive Summary

Governor Gary Locke and Attorney General Christine Gregoire sponsored a Risk Management Task Force to renew efforts to better protect the public, mitigate loss and damages related to state services, and recommend ways to improve the state's risk management program.

The Risk Management Task Force includes the Attorney General and members from higher education, public agencies, the legislature and private health and law sectors. (See Appendix A.) The Task Force met on a number of occasions. It heard background information on state service risks, risk management practices, and state employees' jobs. It heard public comment and discussed recommendations.

State government is the biggest, most diverse enterprise in Washington. It delivers a broad range of services, some so difficult and risky that no one else can or will provide them. When damages or loss occur related to state services, and a court finds that any of the loss was caused by the state's negligence, the state may be liable to pay claims and judgments to injured parties. State tort payouts reached an all-time high in Fiscal Year 2001 at over \$85 million. (See Appendix B.) Section II highlights some of the risk attributes state agencies must address and manage to decrease these losses.

The Risk Management Task Force focused on recommendations to improve loss prevention – mitigating risks when services are delivered, in an attempt to avoid human loss and suffering in the first place. The Task Force's recommendations to the sponsors are below. Specifics related to scope, feasibility and implementation will be developed by related agencies and appropriate stakeholders. Explanations, benefits and implementation considerations are detailed in Section III.

Recommendation 1:

Establish statewide risk management responsibility at a policy level in state government by consolidating the statewide risk management function in the Office of Financial Management.

Recommendation 1.1: Provide policy level visibility within the budget process to each agency's loss funding requirements and loss prevention efforts. This will provide greater accountability and incentive for effective loss prevention.

Recommendation 1.2: Restore loss prevention and control resources and authority within the state Office of Risk Management.

Recommendation 1.3: Require agencies with significant risk exposure to develop loss prevention goals and work with both the Office of Risk Management and the budget analysts at the Office of Financial Management on making progress toward those goals.

Recommendation 1.4: Implement an executive-level immediate response team to help agency executives during a critical incident response.

Recommendation 1.5: Appoint agency executives to the Risk Management Advisory Committee.

Recommendation 1.6: Develop a Risk Management Academy.

Recommendation 1.7: Among information systems and technology resource requests, give priority to systems and technologies that support high-risk services and address risk mitigation strategies.

Recommendation 2:

OFM should require agencies to conduct post-incident reviews to provide recommendations about avoiding or reducing losses or incidents in the future. Follow-up reports on implementation of corrective measures should be submitted to the Office of Financial Management.

Recommendation 2.1: Encourage agencies to conduct post-incident reviews¹ frankly by placing limits on the use of such reviews in later civil proceedings.

Recommendation 3:

State agencies experiencing significant losses or potential losses should appropriately equip service delivery staff to address those losses.

Recommendation 3.1: Review programs with significant claims of loss, or potential for significant claims, to address responsibilities and mitigate risk exposure.

Recommendation 3.2: Provide focused guidance for program staff and service providers, which is concise, relevant, easy to understand, and provides practical guidance for quality services. Establish a schedule to review guidelines.

Recommendation 3.3: Give priority to training relevant to loss history and significant claims for service delivery staff and supervisors.

Recommendation 3.4: Hold staff accountable for agreed upon performance expectations.

Recommendation 3.5: Require reasonable background checks for persons with whom the state contracts to care for the most vulnerable clients (through contractual agreement).

Recommendation 4:

Agencies/programs with significant risk exposure should reach out to victims and communities.

Recommendation 4.1: The agency involved in a loss should consider visiting the victims and /or family members to express regret and consider offering services that might aid them in dealing with the situation.

Recommendation 4.2: Involve employees and members of communities served and their advocates, to help address service delivery risk mitigation.

¹ The Departments of Corrections, General Administration, Transportation and Social and Health Services urge consideration also be given to authorizing OFM to order, and placing limits on the use of, other types of loss prevention reviews not addressed by this recommendation.

Recommendation 5:

Executive agencies, OFM and the Legislature should jointly develop mechanisms to assist and inform the Legislature about risks associated with new laws and lessons learned from incidents and cases.

Recommendation 5.1: Develop a legislation drafting guide that focuses appropriate attention on the risk implications of language in bills.

Recommendation 5.2: Require risk management notes on proposed legislation.

Recommendation 5.3: The Office of Risk Management, with appropriate agency and Attorney General's Office participants, should brief legislative appropriation committees on a regular basis on significant tort claims and litigation, and as needed on payments of an extraordinary nature.

Section I

Why the Risk Management Task Force was Formed

<ul style="list-style-type: none">• Government is taken for granted when all is well, but negative circumstances draw attention	<p>People pay little attention to government when things are going well. Government services are provided to thousands of people every day, many without even knowing it. Vehicle tabs are renewed instantly on the Internet. Burglary suspects are sentenced to prison everyday. School children are learning and thriving. But, when something goes wrong, when people are trapped in traffic, wait in long lines for services, or hear gunshots shatter afternoon recess, citizens take notice and are understandably distraught.</p>
<ul style="list-style-type: none">• Many state services are risky	<p>Some of the services delivered by the state are very risky, in some cases so much so that no one else can or will provide them. Law enforcement, child protective services, prison and correctional services, and long term care for the mentally ill are just a few state services facing tremendous challenges for safe delivery to an ever-expanding number of individuals. In these and other areas, when damages or losses occur, and the state is found negligent, the state may pay substantial damages.</p>
<ul style="list-style-type: none">• Damages and loss are a major concern	<p>Incidents of severe harm to innocent members of the public are receiving significant attention from state executives, the legislature, the courts, and the public. Loss caused by someone already under supervision or being overseen by the state in some way, and vulnerable individuals being harmed while receiving state services, are of particular concern.</p>
<ul style="list-style-type: none">• Tort payouts are at an all-time high	<p>These losses have taken a tremendous toll, both in terms of human suffering and fiscal impacts. Judgments and claims against the state have reached an unprecedented level as the state is held liable for these losses. The state spent over \$85 million in Fiscal Year 2001 to pay its share of claims and judgments for injuries and losses – some of which may have been avoidable, and all stemming from findings of negligence by the state. Although the actuary estimated payouts at \$28 million for Fiscal Year (FY) 2001, the actual payout was \$85 million. The actuary is projecting a payout of \$39 million for FY 2002. The actual figure is uncertain and difficult to project because of the dynamics of the litigation process, trial dates and final resolution of claims.</p>
<ul style="list-style-type: none">• Total outstanding liabilities are continuing to grow	<p>The state's actuarial estimate of "total outstanding liability," exclusive of tort defense costs, was \$75 million in 1990, \$113.8 million in 1995, \$209 million in June 2001, and is projected to rise to \$514 million by</p>

- Focus on risk management by Governor and Attorney General
 - The Risk Management review was time-sensitive and focused
- 2005, in part because of a market-driven increase in the deductible paid by the state under its excess liability insurance policy.² (*"Total outstanding liabilities" includes the cost over time of resolving all claims from all incidents through the date of the projection. Past claim history is used to project what future claims would be.*)
- The state would prefer to use its limited resources to deliver safe and effective services. Due to undesirable human behavior, certain social policies, laws and limited resources, *all* public harm or loss cannot be avoided. However, more needs to be done to address practices, policies and resources to provide effective state services while avoiding harm.
- To renew the focus on preventing harm and loss to citizens, Governor Gary Locke and Attorney General Christine Gregoire have jointly undertaken a risk management initiative. The purpose is to identify ways Washington State can deliver services in a manner that best protects its citizens from harm or injury and engages in the most effective risk management possible, given the difficult program and service areas managed by state government.
- The Washington State Risk Management Task Force was created as one element of this cooperative initiative. It was charged with reviewing a sample of risk management efforts employed by state government and providing guidance and recommendations for improvements.
- The Task Force asked five questions:
1. What are the attributes of state government programs/services that have high-risk exposure?
 2. How can various agencies operate within those programs/services in a manner that mitigates risk exposure, while still delivering the most effective and useful services?
 3. What are the roles of the influencing entities and how are agency/statewide risks currently managed?
 4. What factors external to the agency operating environment contribute to the state's risk exposure?
 5. Is the current risk management funding mechanism meeting its intent to promote accountability and incentive for controlling risks?

² The tort payout amounts and actuarial estimates were provided by the State's Office of Risk Management. Actuarial estimates are established by an independent actuary.

- Risk attributes identified in five agencies
 - Information for recommendations
- The review focused on the experiences of five state agencies that provide particularly challenging public services, as well as the agencies that provide risk management support. The information from agencies included discussion of risks at the point of service delivery and strategies to mitigate those risks.
- Information about risk attributes was collected from a sample of state agencies including the:
- ♦ Department of Social and Health Services,
 - ♦ Department of Corrections,
 - ♦ Department of Transportation,
 - ♦ Parks and Recreation Commission, and
 - ♦ Washington State Patrol.
- The Office of Financial Management, the Department of General Administration, and the Attorney General's Office contributed insights from a statewide perspective. A social worker, a highway worker and a community correctional officer discussed the challenges they face daily in delivering services to the public.
- Victims of violence, members of several advocacy groups, and other concerned state residents provided valuable testimony both in person and in writing. Information provided by all of these sources defined the current risk management environment for the Task Force.

Section II

What We Learned

- State government is the biggest, most diverse enterprise in Washington

State services range from education to recreation, law enforcement to childcare, transportation to incarceration, agriculture to housing, and forestry to international trade. Many services are so well integrated that we take them for granted, hardly noticing that they are provided. Other services are nearly invisible to the public, being provided directly to one person at a time or in a setting away from the general public.

- The state serves a growing population

State spending is driven by total population growth and by changes in the age structure of our residents. Washington has more than doubled in population in the last 40 years, from 2.8 million residents in 1960 to more than 5.8 million residents in 2000. The elderly population, aged 65 and over, increased by 15% in the last 10 years to more than 655,000. The elderly population is expected to continue growing significantly as the baby boomers enter this age group. Demands placed on state services will continue to grow.

To understand the extent of the services provided, consider these brief statistics describing the work done by state agencies in just one year.

– *Department of Social and Health Services*

The Department of Social and Health Services reported that in just one year it:

- ♦ Served about 1.3 million Washington residents (1 out of 5 state residents)
- ♦ Provided multiple services to more than half of their DSHS clients
- ♦ Received over 75,000 reports of suspected child abuse or neglect (CY1999)
- ♦ Identified over 58,000 child abuse victims (CY 1999)
- ♦ Received over 24,000 reports of suspected adult abuse or neglect
- ♦ At state institutions, treated 1,100+ juvenile offenders age 12 to 17 who have at least one violent offense or a large number of various offenses

- *Department of Corrections*

The Department of Corrections reported in one year:

 - ◆ 14,920 offenders incarcerated
 - ◆ Offender facilities’ capacity of 11,220
 - ◆ 2,754 officers supervised incarcerated offenders
 - ◆ 90,333 offenders had field cases in the state, with 57,563 under active community supervision
 - ◆ 575 officers provided offender field supervision
 - ◆ 32% of offenders returned to prison within five years

- *Department of Transportation*

The Department of Transportation reported in one year:

 - ◆ Over 7,000 miles of state highways and roads administered
 - ◆ 45,000 traffic accidents on state roads
 - ◆ Over 600 traffic related fatalities
 - ◆ Over 26 million passengers on state ferries
 - ◆ 29 ferries in fleet
 - ◆ 10 ferry routes in service
 - ◆ 1,115 vessel employees subject to provision of the Jones Act³
 - ◆ Over 5.8 million vehicles registered in state
 - ◆ Over 4 million drivers licensed in state

- *Parks and Recreation Commission*

The Parks and Recreation Commission reported in one year:

 - ◆ 125 developed parks
 - ◆ 260,000 acres of parks
 - ◆ Over 52 million annual visitors
 - ◆ Over 4,000 miles of recreational trails
 - ◆ \$.78 spent per park visitor in state
 - ◆ \$1.96 spent per park visitor on average nationwide

³ Jones Act – federal maritime law covering DOT vessel employees for on-the-job injuries or accidents.

<p>– <i>Washington State Patrol</i></p>	<p>The Washington State Patrol reported in one year:</p> <ul style="list-style-type: none">♦ Primary law enforcement responsibility on 17,524 miles of state roads and highways♦ Over 52.7 billion vehicle miles traveled in state♦ 15,184 aggressive drivers stopped♦ More than 265,000 violations issued♦ 13,197 drivers arrested for DUI♦ 7,029 cases handled by Toxicology Lab♦ 1,000 commissioned law enforcement officers
<p>• Public comment was provided through several venues</p>	<p>Task Force meetings were open to the public. Written comment was encouraged and received, and a panel of victim and service advocates was invited to comment on Task Force discussions and to suggest recommendations for risk management improvements.</p> <p>Most of the public comment reflected concerns about the harm caused by individuals under state supervision or care, and harm caused to clients while receiving state services. Some concerns related to the tendency of people to litigate and awards of what some regarded as inordinately large tort payouts of taxpayer funds by the courts.</p> <p>Public comment related to tragic outcomes connected to state services was often passionate, compelling and painful. Suggestions from these members of the public included:</p> <ul style="list-style-type: none">♦ The state should be accountable for protection of vulnerable people receiving public services, and for protection of the public from offenders and violent mentally ill under state supervision.♦ The state should be accountable for damages and loss that occur.♦ Prevent loss before it happens.♦ Damages and loss occur when state employees do not follow policies, procedures and established practices; ensure employees follow the state's own rules.♦ The state should ensure staff delivering services, and their supervisors, are adequately trained and staffed.♦ Acknowledge problems and learn from mistakes or incidents that occur; don't let the same tragedies happen again.♦ Engage the community in helping to mitigate risks before they occur.

- ◆ Do the right thing and put a human face on state government by expressing regret to victims and their families and offering services that might aid them in dealing with their situation.
- ◆ Quality care leads to reduced risk.
- ◆ Reduction of resources increases risk; adequate resources need to be appropriated for quality services.
- ◆ A few people suggested that the state needs legislation to cap the amount of dollars that can be awarded against the state in lawsuits.

* See Recommendations 1.3, 2, 3., 3.1-3.5, 4., 4.1, and 4.2.

Executives from all five participating agencies were interviewed. A total of 37 interviews were conducted with 56 participants. The results of the fieldwork were used to answer the five essential questions posed by the Task Force.

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The following answers are based primarily upon the 37 interviews with state agency directors and staff. Their perspective was taken into account by the Task Force as we developed our recommendations.

1. What are the attributes of state government programs and/or services that have high-risk exposure?

- Many of the persons served by the state are vulnerable or engage in behaviors that are difficult to predict and control

There were several categories that emerged as the risk attributes were described, including the nature of the clients, services, staff or providers, system issues and resource issues.

Many risk attributes were related to the vulnerable nature of certain clients. Risks of harm to clients, caretakers, providers of services, or the public are inherent because of fragile conditions or because of undesirable behavior. State clients with the following characteristics pose risk for service providers:

- ◆ Mentally, physically, or chronically ill;
- ◆ Blind, deaf or hard of hearing;
- ◆ Developmentally disabled;
- ◆ Addicted to drugs or alcohol;
- ◆ Long term care requirement;
- ◆ Children or adults who are vulnerable to abuse, neglect or harm;

<ul style="list-style-type: none">• Known dangers exist and must be carefully supervised	<ul style="list-style-type: none">♦ Children or adults who must rely on the state for service or protection because they have no one else to take care of them;♦ Drivers encountering road hazards or exhibiting inattention, impairment or poor judgment; and♦ Visitors to state owned lands seeking a variety of adventures and thrills. <p>Persons under supervision with the following characteristics pose risk for service providers and for communities:</p> <ul style="list-style-type: none">♦ Civilly committed sex offenders under treatment; and♦ Juvenile or adult offenders, incarcerated or released, who often have established cycles of drug use, crime, abuse or violence.
<ul style="list-style-type: none">• Some services are inherently hazardous	<p>Services are inherently risky when they require high levels of professional judgment in critical situations involving public or client safety and/or health. Services are risky when conducted in hazardous locations, such as on the freeway, or with equipment that can be complicated or dangerous to operate. There are inherent exposures when balancing duty, safety and intrusion into private lives and businesses. Difficult services involve people who want to do harm, people with complex or fragile medical issues, or vulnerable children and adults who cannot take care of themselves. These services can result in serious injuries or losses. Examples of state services that are inherently risky include:</p> <ul style="list-style-type: none">♦ Law enforcement,♦ Correctional services in prisons or communities,♦ Traffic safety,♦ Transportation services on waterways and roads,♦ In-home and institutional care, and♦ Child and adult programs designed to protect vulnerable individuals.
<ul style="list-style-type: none">• Increased hazardous conditions	<p>Some agencies feel they have no choice but to deliver services using aging vehicles, buildings, roads, bridges, and ferries with significant maintenance needs. Despite best efforts to plan, services must sometimes be delivered to more clients than originally assumed in the plan, design or budget.</p> <p>Services are often delivered to a dense population of similar clients within a confined amount of space, creating increased risk exposure due to the interaction among people.</p>

<ul style="list-style-type: none"> • Risk attributes related to staff or service providers 	<p>Some services must be provided 24 hours per day, seven days per week, regardless of staffing levels, inclement weather, earthquakes, volcanoes, power outages, fuel shortages, or other unsafe conditions.</p>
	<p>The state uses a number of service delivery options. It uses its own employees to deliver services directly, contracts with private service providers, or passes funding to other public and private agencies to provide the services. The most risky services require integrity, sound professional judgment (often in critical situations), and appropriate facilities and equipment. The state has more direct control over its own employees, and less control over contracted services. Examples related to state staff or other service providers follow.</p>
<ul style="list-style-type: none"> – Absence of guidelines for the exercise of professional judgment 	<ul style="list-style-type: none"> ♦ Risks rise when staff or providers must exercise their professional judgment to act or not to act, based on available knowledge and information, existing policies, procedures, and guidelines, and the specific circumstances. If they fail to act appropriately or to follow existing, but sometimes complex, procedures and policies, it can have a profound negative impact.
<ul style="list-style-type: none"> – Services with little oversight or visibility 	<ul style="list-style-type: none"> ♦ Direct services provided within the community and outside an institutional setting may be invisible to the public and state agency managers and may receive little or no oversight. This creates the potential for inappropriate actions to go unchecked for longer periods of time. This is especially problematic in a private business or residential setting.
<ul style="list-style-type: none"> – Lack of insurance 	<ul style="list-style-type: none"> ♦ Direct service providers often lack insurance to cover harm or injury sustained during the delivery of the service. This can leave both the provider and the client with no means to cover the loss.
<ul style="list-style-type: none"> – Potential conflict of interest 	<ul style="list-style-type: none"> ♦ While the overwhelming majority of staff and providers do a fine job of serving the public, a few staff or providers may have motivations that are not in the best interest of clients needing service. Opportunistic individuals can be drawn to vulnerable clients, and service providers can choose their own business interests over the clients' personal health and safety interests.
<ul style="list-style-type: none"> – High staff turnover and vacancy rates 	<ul style="list-style-type: none"> ♦ High staff turnover and vacancy rates in state institutions and with service providers can create situations where there is inadequate supervision of clients and personnel, or ability to correctly apply procedures.
<ul style="list-style-type: none"> – Low staff morale 	<ul style="list-style-type: none"> ♦ Some agencies perceive that low morale among some staff, public distrust and criticism, and threats to employees can distract employees from delivering quality services or inhibit their will to do so.

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- *Difficult work*
 - ◆ Work that is physically demanding, inadequately compensated, or not necessarily appealing reduces the pool of willing workers and worsens staffing shortages and turnover.
- *Relatively low pay and minimum skill sets*
 - ◆ Caregivers receive relatively low pay and few benefits. While most are caring, competent and devoted workers, some possess minimal qualifications and skills and sometimes perform inadequately. Many are not required to pass background checks. Workers with a history of doing poor work can move from job to job with negative performance issues, because there is no central data collection point for this information. Inappropriate actions and poor performance can go undetected from workplace to workplace.
- *Low pay may create attrition*
 - ◆ Pay levels at some agencies may be insufficient to compete with comparable public and private sector positions.
- * *See Recommendations 3, and 3.1 – 3.5.*
- Information systems contribute to risks

Relevant and timely information is critical to safe, effective service delivery and case management. Sometimes information collected on the spot is enough to ensure appropriate care is taken. In other cases, information collected over time and from a variety of agencies or other sources is critical to effective case management. Interview participants highlighted the following information systems issues they believe contribute to risks in the delivery of services.

 - *Unable to exchange data*
 - ◆ Information systems were not designed to exchange data or to be compatible with other agency or other state systems, severely constraining timely sharing of critical information.
 - *Inadequate physical communication systems*
 - ◆ Physical communication systems between organizations, such as radios, are often inadequate, outdated, incompatible, or non-existent. The resulting barriers or delays in the transmittal of relevant client information from one organization to another can increase the possibility that actions will not be based on available knowledge and complete information.
 - *Inadequate case management tools*
 - ◆ Information systems within some programs do not meet all of the case management requirements or needs. Working around the existing information system such as by creating adjunct information systems can lead to erratic tracking and misunderstanding of client history and ill-informed decisions and actions.
 - *Inadequate management information*
 - ◆ Information systems within and between agencies do not always meet program management requirements or needs. Supervisors and managers do not always have all the information they need to

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<ul style="list-style-type: none"> - <i>Difficult system maintenance</i> 	<p>provide appropriate guidance to staff or to hold them accountable for their activities and performance.</p>
<ul style="list-style-type: none"> - <i>Staff time and training required</i> 	<ul style="list-style-type: none"> ◆ Systems development, maintenance and support are complex, expensive, and often misunderstood, especially on older legacy mainframe systems. This situation makes it difficult to keep up with needed changes for better management or case management information.
<ul style="list-style-type: none"> - <i>Expensive to build and to maintain</i> 	<ul style="list-style-type: none"> ◆ Systems rely heavily on the ability of all staff or service providers to intuitively understand the system and to input relevant information. Besides providing direct services, staff must accurately input and retrieve information in paper or electronic form, and capture information in a timely manner. They must document individual events, actions and observations in an accurate, complete and consistent method, and correctly interpret the information obtained.
<ul style="list-style-type: none"> • Services that do not meet expectations create risk exposure 	<ul style="list-style-type: none"> ◆ Information systems are expensive to build and maintain. Enhancing and maintaining existing systems sometimes costs too much, and new system requests are often denied in favor of higher priority items.
<ul style="list-style-type: none"> - <i>Increasing workloads</i> 	<p>* <i>See Recommendation 1.7.</i></p> <p>Common expectations for service delivery and outcomes, good management, and adequate resources are critical to the success of effective and safe delivery of state services. Agency participants described many resource issues related to risk exposure in program service delivery.</p>
<ul style="list-style-type: none"> - <i>Expectations exceed services</i> 	<ul style="list-style-type: none"> ◆ Workloads within many programs and services continue to increase due to state population and demographic changes. Requirements or standards for programs and services often expand due to legislative action or judicial decisions at either the state or federal level. Commensurate resource adjustments are not often made, and capacity to deliver programs and services is frequently inadequate to meet work requirements or standards.
<ul style="list-style-type: none"> - <i>Lack of training</i> 	<ul style="list-style-type: none"> ◆ Public expectations of programs and services are often not met, largely because the human and financial resources available are inadequate to meet those expectations. ◆ Lack of training was cited as a cause of increased risk. Training can be expensive, and requires staff to take time away from their duties. Lack of funding to cover these costs contributes to

– Resource competition

deficiencies and inconsistencies in skills and knowledge. When agency budgets are cut, training is often the first item to go.

- ♦ Many agencies perceive that available resources are often inadequate to maintain facilities at an acceptable level, to offer wages and benefits that will attract or retain qualified workers in certain areas, to maintain an infrastructure to adequately support the program, and to develop workload measurements and standards.

* See Recommendations 3, 3.1-3.5, and 5.2.

2. How can various agencies operate within those programs/services in a manner that mitigates risk exposure, while still delivering the most effective and useful services?

• Control varies

Agencies control many of the factors that determine the quality of their programs. There are other significant factors they may influence but cannot directly control. Agencies control how their services are delivered, and how appropriated funds are spent. They do not control *how much* funding they receive or *what* they are asked to do.

Agencies discussed risk mitigation strategies within the control of the agency and those strategies outside the control of the agency.

• Reduce risks in their control

Acknowledging that some services are inherently risky, and that measures must be taken to control risks and avoid loss or damages, many of the agencies interviewed have pursued risk mitigation strategies within their control including:

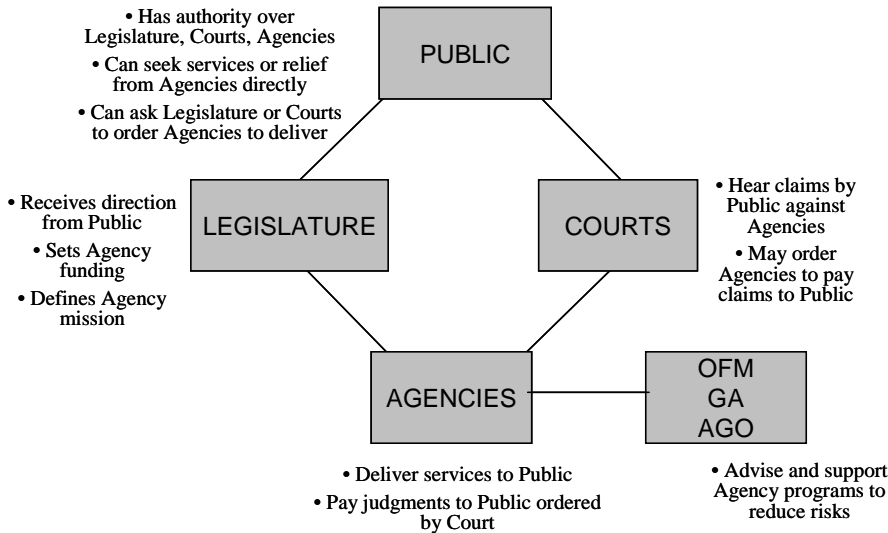
- ♦ Establishing a risk management function within their agency;
- ♦ Exercising executive involvement in risk related activities;
- ♦ Attempting to identify and understand the risks associated with each service;
- ♦ Reviewing operations and service delivery guidelines from a risk management perspective;
- ♦ Implementing changes within their authority to reduce risk exposure;
- ♦ Providing operationally sound program guidance;
- ♦ Improving the use of technology to track program and staff performance;
- ♦ Recruiting reliable, ethical staff who will follow guidelines;
- ♦ Preparing staff adequately to deliver appropriate services;

- ♦ Developing workload measurements and standards for staff;
 - ♦ Monitoring performance of staff and increasing accountability;
 - ♦ Sharing or transferring liability through contractual agreements when financially possible;
 - ♦ Modifying contract expectations to focus on service outcomes;
 - ♦ Eliminating functions that lack statutory direction or budgetary support; and
 - ♦ Participating actively on the Risk Management Advisory Committee to keep current with risk issues and mitigation opportunities.
- Influencing decisions outside their control
- In addition to improving risk mitigation strategies under their control, the agencies interviewed also attempt to influence decisions that are not within their direct control. These are usually related to funding, laws and public expectations. Although attempts are made, they have varying degrees of success because they are dependent on other entities and resources that may not be available. Examples include:
- ♦ Developing and submitting agency request legislation to clarify or establish service parameters,
 - ♦ Developing and submitting budget decision packages to address resource inadequacies,
 - ♦ Working with stakeholders to reach agreement on expected workload measures and standards for priority services,
 - ♦ Utilizing expertise of the Attorney General's Office to review programs and service designs to reduce risk exposure, and
 - ♦ Drawing on expertise within the General Administration Office of Risk Management to identify and implement risk mitigation strategies.
- * See Recommendations 1.2, 1.3, 1.4, 1.5, 1.6, 2, 2.1, 4., 4.1, 4.2.

3. What are the roles of the influencing entities and how are agency and/or statewide risks currently managed?

- Interdependency and shared responsibility among influencing entities

To answer this question it is important to identify the roles of the influencing entities, and to understand the agencies' individual management of risks, and statewide support for risk management. The graphic below illustrates the relationship among influencing entities.



- ♦ The public is the primary driver of program expectations. The public has ultimate authority over agencies, the legislature and the courts. Members of the public can seek services or compensation directly from agencies, or can ask the legislature or the courts to compel agencies to deliver.
- ♦ The legislature receives direction from the public, defines an agency's mission, and determines its funding.
- ♦ Agencies serve the public by implementing programs established and funded by the legislature. Agencies pay judgments ordered by the courts and follow court interpretations of the laws governing the agency.
- ♦ The courts hear claims for damages brought by members of the public against agencies, and sometimes order agencies to pay those claims.

- ♦ The Attorney General’s Office (AGO), the Office of Financial Management (OFM), and Department of General Administration (GA) advise and support agency programs to mitigate risk.
- *Legislature defines expectations and appropriates resources* The legislature enacts laws to implement new programs, to change, expand or limit existing programs, and to codify public policies. These mandates form the core expectations and scope of services for agency programs. Agencies may or may not receive resources commensurate to those expectations, but nevertheless, must move forward to implement the programs with the resources, constraints and expectations given to them. There is currently no formal assessment of risks associated with new programs or changes at the legislative level, and accountability for the safe and efficient service delivery rests with the agencies, regardless of their constraints.
- *Agencies allocate resources, develop policies, and deliver services* Currently, agencies manage risk by establishing risk management programs, practices and responsibilities. Agencies also involve top managers in making decisions about operational policies, and in resolving significant or precedent-setting claims. As information improves, agencies review and analyze data and reports provided by General Administration and the Attorney General’s Office to get a better understanding of loss patterns and exposure. Agencies have ultimate accountability for meeting expectations and mitigating risks.
- *Courts interpret and clarify law* Courts clarify, expand or limit program expectations by interpreting the law and the circumstances brought before them. In some cases, stakeholders, agency managers, the legislature, the public, and service recipients all differ in their expectations of a program, and courts sometimes resolve such differences by interpreting laws and defining the agency’s duties. Again, courts are entitled to change, expand or limit programs without considering the resources available to support changes.
- *State risk management spread across several agencies* The Risk Management Advisory Committee (RMAC), established by law, addresses statewide management of risk. The RMAC identifies issues of statewide significance and recommends actions to the GA Office of Risk Management. Participants are usually agency risk management staff. The Director of GA chairs the RMAC.
- Staff from the AGO, OFM and GA assist client agencies with individual claims and lawsuits. The Department of Transportation provides support for vehicle-related claims for all state agencies and for general liability claims against the Department of Transportation. With a renewed, enhanced focus on risk management and current methods of defense, the Attorney General’s Office provides legal support to agencies and the central Office of Risk Management.

Included are proactive legal advice on how to reduce risk, and legal advice and representation on claims, settlements, and lawsuits. The Office of Financial Management provides budget support and advice to agencies. The Department of General Administration Office of Risk Management provides central support for risk management activities, the RMAC, and the administration of central claims and risk funding.

The state has commissioned a number of studies focusing on the state's risk management practices. The Price Waterhouse study conducted in 1987 led to a number of recommendations to establish and improve risk management and control functions. Many of those recommendations were implemented and resources for statewide risk management support were increased for a short period of time. Subsequent studies followed up on the first study, noting additional improvements along with more recommendations. Over the past decade, central risk management resources have been reduced, restricting the amount of training, guidance and risk management services available to individual agencies.

* See Recommendations 1.1, 1.2, 1.4, 1.5, 1.6, 5.1, 5.2, 5.3.

4. What factors external to the agency operating environment contribute to the state's risk exposure?

Agencies generally have the most control inside their operating environment. But factors external to their operating environment can influence their service delivery, outcomes and risks; in fact, external influences can have a profound effect. Agency comments on external factors contributing to risk generally fell into three categories: 1) a perceived shortage of trust and confidence among influencing entities, 2) resource availability, and 3) miscellaneous factors.

- Perceived shortage of trust and confidence

The legislature, as part of its regular budget process, scrutinizes agency budget requests and sometimes establishes different funding priorities. Some agencies perceive that the legislature lacks confidence in agency budget analysts' views on what level of funding is sufficient to provide services required by law. These agencies feel they are then faced with providing service without adequate resources, and are compelled to make difficult trade-offs among information systems, facility enhancements, equipment, program infrastructure, staffing levels, and training.

- By the legislature

Another reported shortage of confidence contributing to risk exposure relates to studies and reports requested by the legislature or another state agency and prepared in good faith by program experts. These

- reports provide further documentation of known risk exposures and areas of liability. Agencies perceive that if they do not implement the recommendations stated in such reports, they may add to the distrust and to the agency's risk exposure.
- *By the public*

Some agencies perceive that the public is often skeptical and openly critical of how state programs utilize their resources, seeing little value in expenses for such items as information systems, training, equipment, and travel. Good stewardship of public resources is expected, of course, but some agencies perceive that the public assumes programs are managed inefficiently whether they really are or not. On the positive side, public pressure to reduce the overall cost of program delivery can result in more efficient delivery of services. If programs are already managed efficiently, however, reductions in resources can cut into basic program infrastructure and increase risk exposure.
 - Resource constraints

Interviews disclosed a number of resource issues that agencies see contributing to their risk exposure.

 - *Limited funds to appropriate*

 - ◆ The legislature has a limited amount of money to spend. It must establish spending priorities. To implement new programs, the legislature must cut funding for existing programs or limit funding enhancements. Even when resources decline, however, agencies perceive that programs are rarely cut entirely and expectations for services do not decrease.
 - *Resource requests and decisions not tied to risk exposures and avoidance*

 - ◆ Funding requests and appropriations are not necessarily linked to program risk exposures. That is, agencies do not present a persuasive business case for funding linked to risk exposure, public loss or damage, and the legislature accordingly does not necessarily consider those factors in the appropriation. The business case is usually presented in positive terms, what benefits will be received, and not necessarily in terms of loss avoided.
 - *Statewide risk management support is limited*

 - ◆ Agencies believe access to additional legal support in the Attorney General's Office is limited due to the AGO's budget constraints, staff turnover and heavy workload. Agencies would like more proactive support on mitigating legal exposure and preparing materials and individuals for trial, but resources are limited.
 - ◆ Agencies would also like additional loss prevention support from central risk management, but it is limited due to budget constraints, lack of staff and heavy workload.

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| <ul style="list-style-type: none">• General factors– <i>Pretrial publicity</i>– <i>Changes in program expectations</i>– <i>Statutory changes do not consider risk exposures</i>– <i>Liable for costs with only partial responsibility</i>– <i>Constraints complicate ability to defend</i> | <p>Some external factors of a general nature, contributing in varying degrees to risk exposure, were reported during the agency interviews.</p> <ul style="list-style-type: none">♦ Agencies are concerned about pretrial publicity that occurs before a court has made any findings of fault. If such publicity omits some of the facts and circumstances, the concern is that it may prejudice potential jurors against the state.♦ State programs continue to have the responsibility to follow statutes and court rulings in delivering services. Meanwhile, a sudden, court-ordered expansion in program duty leaves the agency scrambling to meet new requirements that were not anticipated. Whether such an expansion of service is small or large, it still is an unplanned change that is out of sequence with the program development and budget cycle. This creates more risk exposure for the agency to consider.♦ Proposed changes to statutes are considered without a formal analysis of possible risk exposure created by the change. Unlike the careful fiscal analysis that is completed on every proposed statutory change, a risk analysis is not completed. Some programs currently lack the expertise to independently prepare a thorough risk analysis. Agency interview participants believe that more attention to the possible risks of statutory changes will help avoid damages and increased risk exposure later.♦ Agencies believe that Joint and Several Liability⁴ contributes significantly to the state’s risk exposure. Including the state in legal actions and successfully arguing that the state is at fault opens the state to paying 100% of the judgment even if other parties bear far more fault. The state is reportedly perceived as the “deep pocket” and is often unable to successfully avoid being part of large monetary judgments. The resulting costs to the state are out of proportion to the amount of negligence found attributable to the state. The perception that the state was completely liable further erodes public confidence.♦ Complicating the legal issues is the restriction on introduction of evidence crucial to establishing potential negligence by any involved parties. Not being allowed to introduce certain evidence, such as whether seat belts were used in a vehicle and other patterns of behavior, appears to hinder defenses in actions brought against the state. |
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⁴ The Joint and Several Liability doctrine is that each defendant against whom judgment is entered is liable for all damages if the plaintiff is free of fault.

– Program review and improvements used against state

- ♦ The agencies expressed concern that their efforts to improve their programs could create greater risk exposure. There is a tension between (a) identifying deficiencies in the system for the purpose of preventing recurrence of negligence and subsequent injury and (b) avoiding admission of any fault for negligence and injury, that has already occurred.
- ♦ The agencies state that their efforts to improve their performance are being affected by the knowledge that such efforts are admissible in court as evidence of past negligence. Agencies believe that to improve services and reduce loss and suffering, it is important for them to be able to document deficiencies, identify program improvements, critique incidents candidly, and articulate the lessons learned from an incident. Interview participants noted that they are not necessarily concerned about making such documents available to the public and the legislature, and they are not interested in “covering up” inadequacies. However, these reports are seen as “smoking guns” that can be used against the state in court. The inability to protect this information from being used against the state in legal actions, even if it was used to improve service delivery and reduce harm, is regarded as adding to the state’s risk exposure.

* See Recommendations 1.1, 1.3, 2., 2.1, 4., 4.1, 4.2, 5.2, 5.3.

5. Is the current risk management funding mechanism meeting its intent to promote accountability and incentive for controlling risks?

• Accountability and incentive for controlling risks is weak

There is no tangible evidence that the current statewide risk management funding mechanism *itself* promotes strong accountability or incentives for controlling risks. The current budget processes disconnect any direct accountability and do not provide sufficient visibility for the “total cost of risk” to be understood in the policy setting process.

Agency self-insurance premiums for claims and judgments reflect the agencies’ success or failure in stemming loss; that is, agencies with more payouts have higher premiums. Self-insurance premiums are included in agency budgets, but are not visible at a budget “policy” level. They are essentially automatically funded and do not receive attention and scrutiny during the budget setting process. The legislature is also obligated to appropriate funds to pay court ordered

tort judgments regardless of the size of the payment or the capacity to pay.

Managers should be held accountable for managing risks. This is sometimes difficult because so many claims are not resolved until years after the loss occurs. Often, responsible decision makers have departed or changed roles by the time an outcome is known.

Even when an agency effectively manages loss, it may experience higher insurance premiums due to the shared risk strategy. Premiums are based on a percentage of overall statewide liability. If overall liability increases significantly, an agency's actual premiums may go up, even if it has not incurred losses.

* *See Recommendations 1, 1.1, 5.2, and 5.3*

- Improve loss prevention to avoid harm in the first place

After receiving background information from participating state agencies and comments from the public and key stakeholders, the Task Force discussions and deliberations concentrated on strategies to prevent loss from happening in the first place. Task Force members and other stakeholders focused on identifying ways to improve proactive risk management – preventing or mitigating harm at the point when services are delivered. Task Force recommendations are outlined in the next section.

Section III

What We Recommend

The Task Force considered fieldwork results, public comment, and best practices in risk management. Task Force members and other participants discussed the issues, improvement opportunities and constraints around improving risk management results. The resulting recommendations are submitted to the Task Force sponsors, Governor Gary Locke and Attorney General Christine Gregoire, for consideration.

The recommendations focus primarily on improving loss prevention. Loss prevention strategies involve taking proactive steps to *minimize* damage or harm to the public, clients and employees. This means improving the quality of state services, increasing accountability when those services fail, and learning from losses that do occur.

The proposed recommendations focus on two outcomes: (1) improving accountability for loss prevention at the state and agency levels, and (2) improving the quality of services in those programs that experience significant losses.

Some recommendations may be quickly implemented and immediately mitigate further losses. Other recommendations may take considerable time, effort and resources to implement. Some recommendations require support and action from the Legislature. An implementation strategy must consider the constraints and specific barriers to be removed or addressed to achieve recommended, sustained improvements.

Recommendation 1. Establish statewide risk management responsibility at a policy level in state government by consolidating the statewide risk management function in the Office of Financial Management.

Directed to:	Legislature, Office of Financial Management, and Department of General Administration.
Explanation:	The statewide risk management function is currently located in the Department of General Administration. The Office of Risk Management (ORM) administers the majority of the self-insurance programs and supports the Risk Management Advisory Committee. While the ORM has done a good job within General Administration, it does not receive the same level of visibility it would in the Governor's Office of Financial Management.
Benefits:	This recommendation establishes statewide risk management responsibility at a policy level in state government. It provides higher visibility for statewide risk management and risk funding, and increases executive involvement in risk management issues. It improves statewide risk management accountability.

Implementation Considerations: Legislative changes to Chapters 4.92 and 43.19 RCW would be required to move the Office of Risk Management to OFM. A detailed implementation plan would also be required. Resources would need to move with the ORM, and additional resources would be required to give the program the focus and visibility it needs. If additional resources are not provided, there would be marginal value in moving this function.

The Office of Financial Management should have authority and responsibility to implement the following supporting recommendations:

Recommendation 1.1 Provide policy level visibility within the budget process to each agency's loss funding requirements and loss prevention efforts. This will provide greater accountability and incentive for effective loss prevention.

Directed to: Office of Financial Management, Legislature, Office of Risk Management, and Risk Management Advisory Committee (RMAC).

Explanation: Currently, self-insurance premiums are included in agency budgets, but are not visible at a budget "policy" level. They are essentially automatically funded and do not receive attention and scrutiny during the budget setting process.

Benefits: Under this proposal, payouts resulting from tort liability would receive more visibility in the budget process, and therefore more attention from executives and the legislature. This attention would also make agencies more accountable for reducing liability.

Implementation Considerations: OFM should promptly develop a detailed plan to implement this recommendation and change the way funding decisions are made. The current liability funding system was created to meet certain goals. OFM should review those goals, modify them if necessary, and assess whether the goals are being met through the current practices.

Recommendation 1.2 Restore loss prevention and control resources and authority within the state Office of Risk Management.

Directed to: Legislature, Office of Financial Management, and Office of Risk Management.

Explanation: Following the heightened risk management focus of the late 1980's, the Office of Risk Management had more resources than they do currently (22 FTEs in the early 1990's compared to 14.5 FTE's today). They were able to provide agencies with risk assessment guidance and

Benefits:	<p>be more proactive in risk management. Although they have functioned adequately with reduced resources, with additional resources the Office of Risk Management could provide more effective assistance to agencies and improved statewide risk management practices.</p> <p>This proposal would provide for coordinated loss prevention and control strategies and resources, and expertise for state agencies to use as necessary, for their own loss prevention programs.</p>
Implementation Considerations:	<p>The requirements to provide effective statewide loss prevention and control support should be defined and then appropriate resources should be estimated and requested. Specific performance measures may also be desired for the Office of Risk Management.</p>
Recommendation 1.3	Require agencies with significant risk exposure to develop loss prevention goals and work with both the Office of Risk Management and the budget analysts at the Office of Financial Management on making progress toward those goals.
Directed to:	<p>Agency Executives and Program Managers, Office of Risk Management, and Office of Financial Management.</p>
Benefits:	<p>Provides a focus on loss prevention and accountability with follow-up on an ongoing basis. Tort payouts would be more visible in the budget process and would receive more attention from executives and the legislature.</p>
Implementation Considerations:	<p>Agencies with significant losses will prepare loss prevention goals that target programs with significant risk exposure. Agencies can use claims and incident information to flag certain issues for early intervention, or to initiate risk assessments and risk mitigation strategies. Agencies will work with OFM and ORM to develop measures, which may include, for example, the number of incidents in certain areas, the number of claims, and the number of positive outcomes. The ultimate objective is to decrease injury and loss, and thereby reduce tort payouts. This process of developing loss prevention goals, and monitoring progress toward these goals, should be closely coordinated with the agency's budget process.</p>
Recommendation 1.4	Implement an executive-level immediate response team to help agency executives during a critical incident response.
Directed to:	<p>Office of Risk Management.</p>
Explanation:	<p>Agency executives sometimes find themselves in a critical situation without previous experience or adequate resources to act immediately. The response team would consist of executive-level managers who have critical incident response experience and availability to quickly assist the affected executive.</p>

Benefits: Provides additional expertise and resources to agency executives who may need assistance in responding to a critical incident quickly and with appropriate analysis and effective follow-up.

Implementation Considerations: Appropriate participants for the response team would need to be identified. They should be trained in what to do and how to avoid making matters worse or confusing the situation. A process for requesting and initiating the response team would need to be developed. This will likely require additional resources for the Office of Risk Management.

Recommendation 1.5 Appoint agency executives to the Risk Management Advisory Committee.

Directed to: Office of Risk Management Agency Director and Agency Executives.

Explanation: The current membership consists of the General Administration Director as Chair, with other lower-level managers as members. The committee has made significant progress over the years. However, there are certain decisions and visibility that require Executive-level attention.

Benefits: Brings executive attention and decision-making to statewide risk management.

Implementation Considerations: Which Executives will be on the Committee? How often does the full committee meet versus sub-committees of other agency managers who can do staff work and report to the full committee?

Recommendation 1.6 Develop Risk Management Academy.

Directed to: Office of Risk Management, Legislature, Department of Personnel, and Attorney General's Office.

Benefits: Provides training and tools for agency executives, program managers and risk managers to improve risk management.

Implementation Considerations: Will require resources and the support of agency executives so the appropriate participants will attend and then apply what they have learned to their work. It will also require resources to develop general curriculum and more advanced curriculum for specific service categories. May also want to consider incorporating into the HELP academy through the Department of Personnel.

Recommendation 1.7 Among information systems and technology resource requests, give priority to systems and technologies that support high-risk services and address risk mitigation strategies.

Directed to:	Legislature, Office of Financial Management, Department of Information Services, and Agency Executives.
Explanation:	Technology and information systems often provide important tools and information for tracking, monitoring and delivering appropriate services and staffing. Untimely, disjointed or missing information can and does create exposure for poor service quality and service delivery risks.
Benefits:	Mitigates risk by funding those critical information systems and technologies that help agencies avoid losses.
Implementation Considerations:	<p>Information systems and technology tools are very expensive, and they are not one-time purchases and expenditures. Maintenance and replacement cycles are short, requiring constant support from human and financial resources. The wide array of technologies and lack of integration within and among agencies and other states compounds the resource requirements, yet information sharing is often precisely what is needed to help mitigate risks.</p> <p>Agencies are also dependent upon systems from other agencies, local governments, courts, or other states. Individual system development and enhancements may bring some benefit, but the full benefit may not be realized when related systems are not integrated or implementation is not coordinated.</p> <p>Information system requests that are necessary for risk mitigation should present a strong business case and be clearly linked to risk mitigation strategies.</p>

Recommendation 2. OFM should require agencies to conduct post-incident reviews to provide recommendations about avoiding or reducing losses or incidents in the future. Follow-up reports on implementation of corrective measures should be submitted to the Office of Risk Management.

Directed to:	Agency Executives and Program Managers, Office of Risk Management, and Attorney General's Office.
Benefits:	Provides positive learning from loss history and specific incidents. If mistakes were made, decide how they could have been avoided and implement improvements. If additional improvements were needed,

Implementation Considerations: decide what can be done in the future, and implement these improvements. If the incident was unavoidable, assess how the incident was handled and if appropriate risk control measures were taken. The Office of Risk Management can use these lessons learned to help educate agency executives and program managers on risk management techniques and tools. Legislators may receive these reports for a better understanding of what risks occur, how they occur, and what can be done to minimize them in the future. Follow-up reports will make it more likely that problems will be corrected.

This is not intended to be a fault-finding investigation. These post-incident reviews are intended to identify areas of improvement to minimize the risk of similar incidents in the future.

Consider proposing legislation that mandates such post-incident and loss prevention reviews, and also stipulate that such reviews, while disclosable to the public and the legislature, cannot be introduced as evidence in civil proceedings. Criteria should be established for deciding which incidents require an independent assessment. A process and format for reporting to the ORM should also be established, including an escalation process if corrective measures are not implemented.

Resources will be required for this effort. For this recommendation to be effective, provisions need to be made to allow an honest and thorough critique, through the following:

Recommendation 2.1 Encourage agencies to conduct post-incident reviews⁵ frankly by placing limits on the use of such reviews in later civil proceedings.

Directed to: Legislature and Attorney General's Office.

Explanation: This should not prohibit sharing information with the public or the legislature and is not an attempt to do so. Currently, documentation of problems and risks can be and has been used against the state in litigation, creating incentives for the state to avoid uncovering and assessing potential problems and risks. Good risk management practices and quality improvement efforts require identification of problems. These reviews should never be used as a means to hide information necessary for the legislature and public to examine or understand the ways in which state agencies are experiencing successes and failures in meeting their mission.

⁵ The Departments of Corrections, General Administration, Transportation and Social and Health Services urge consideration also be given to authorizing OFM to order, and placing limits on the use of, other types of loss prevention reviews not addressed by this recommendation.

Benefits:	Avoids a chilling effect for effective risk management and loss prevention efforts, and promotes candid critiques and feedback on program service delivery. Protection would also allow for sharing pertinent information more openly with the public and the legislature in an effort to improve service delivery and get community feedback.
Implementation Considerations:	Requires legislation. Decisions will need to be made regarding the scope of the protection offered and the type of reviews that will be protected. OFM would direct the reviews to be performed, and not just any agency loss prevention effort or quality assurance review would be protected under this provision.

Recommendation 3. State agencies experiencing significant losses or potential losses should appropriately equip service delivery staff to address those losses.

Directed to:	Agency Executives, Program Managers, Office of Financial Management and Legislature.
Benefits:	Improved service delivery quality.
Implementation Considerations:	Requires adequate resources for training aimed at addressing those losses. In order to carry out this goal, agency executives and managers should implement the following supporting recommendations:

Recommendation 3.1 Review programs with significant claims of loss or potential for significant claims to address responsibilities and mitigate risk exposure.

Directed to:	Agency Executives and Program Managers, and Legislature.
Benefits:	Focuses on allocating resources to the most risky services within an agency to prevent or mitigate loss and meet service expectations and responsibilities. Resource considerations should focus first on mitigating risks.
Implementation Considerations:	Agencies should not necessarily wait until significant claims are filed or litigation occurs. When a number of incidents occur or significant damages or loss occurs, part of the quality assurance review should consider protecting the public, other clients and employees, meeting quality expectations, and ensuring that the agency has the capacity to deliver the service safely. Processes should also be examined and made as effective as possible. Agencies should consult with the Office of Risk Management and the Attorney General's Office in evaluating high-risk programs.

Recommendation 3.2 Provide focused guidance for program staff and service providers which is concise, relevant, easy to understand, and provides practical guidance for quality services. Establish a schedule to review guidelines.

Directed to:	Agency Executives and Program Managers.
Benefits:	Provides concise guidance to service delivery personnel as a baseline for expected service quality and objectives. Concise, relevant, practical guidance is more likely to be read, remembered and applied. Service delivery personnel are also expected to apply sound professional judgment considering the expected service quality and objectives, the specific circumstances, and the baseline guidance.
Implementation Considerations:	Many agencies have hundreds (possibly thousands) of policies, procedures and guidelines. Some agencies have started or substantially completed an effort to streamline and clarify policy guidance. Others have not. It would take a major effort for many to thoroughly review all of these documents and guidelines. Priority should be given to the programs with the most risk exposure, previous losses, and the most exacting policies, procedures and guidelines. Care should be taken to include appropriate participants in the reviews and rewrites, considering program management, service delivery staff, and risk management staff. Guidelines should be tied to the program mission and desired outcomes, and provide practical guidance to service delivery staff and supervisors. In revising policies and guidelines, policy makers must be mindful of minimizing harm and should consult with the Attorney General's Office on how to minimize risk. If an agency finds that the statutes governing that agency stand in the way of better policies, procedures and guidelines, then the agency should report that to OFM.

Recommendation 3.3 Give priority to training relevant to loss history and significant claims for service delivery staff and supervisors.

Directed to:	Legislature, Office of Financial Management, Agency Executives and Program Managers.
Explanation:	When resources are constrained, difficult tradeoffs must be made. Agencies try to avoid reducing staff or services. Training may be the first expenditure to be reduced, in part because its impact on service delivery is not immediate. However, reducing training ultimately reduces service quality and increases risk exposure.

Benefits:	<p>Under this proposal, agencies would give adequate preparation to those employees and their supervisors who provide direct services, so they can deliver the quality services and outcomes expected. Training should include the mission, intent and outcome expected.</p>
Implementation Considerations:	<p>Training should be carefully designed, monitored and tracked to be effective. Training requirements should directly address the basic service needs and professional judgment capabilities of service providers.</p> <p>Training is expensive. It requires time and expertise to develop curriculum and deliver training. Service delivery staff must be relieved of duties to attend training and may incur additional travel costs. Sometimes backups must be hired to fill in for them.</p> <p>The public and others who influence or make resource decisions often perceive training as a luxury. To overcome this perception, training that is required to mitigate significant risks should be clearly linked to risk mitigation strategies as well as program quality initiatives. If Recommendation 5.2 regarding risk management notes is implemented, these notes should take into account the cost of the training that will be required to reduce risk.</p>

Recommendation 3.4 Hold staff accountable for agreed upon performance expectations.

Directed to:	<p>Agency Executives and Managers.</p>
Benefits:	<p>Requires that staff perform as expected to deliver quality services, and gives both positive and negative feedback to employees on their performance.</p> <p>Staff members who perform well should receive the feedback to motivate them to continue doing well. Staff members who do not perform satisfactorily should receive appropriate intervention, which may include counseling, training, reprimands, disciplinary actions or dismissal. The state has a performance review system, but as in many organizations, performance reviews are often neglected. When negative performance issues are encountered, they are not always handled properly and can result in risk exposure to clients, citizens and the agency.</p>
Implementation Considerations:	<p>Supervisors and managers will likely need more training on documenting and managing performance issues. Managing all aspects of performance, especially poor performance, takes a tremendous amount of time and diligence.</p>

Recommendation 3.5 **Require reasonable background checks for persons with whom the state contracts to care for the most vulnerable clients (through contractual agreement).**

Directed to:	Agencies and certain service providers.
Benefits:	Reduces the likelihood that caregivers with known convictions will be allowed to care for vulnerable clients.
Implementation Considerations:	<p>Background checks do not guarantee the integrity of the person checked. The checks do not necessarily contain arrest information, only convictions, and depending on the level of check, may not include arrests in other states.</p> <p>Criteria for “vulnerable” clients will need to be established, as well as the level of background checks. Thorough background checks are expensive and time consuming, and policy makers will need to determine whether the cost of implementing any widespread background check program is prohibitive. Less thorough checks are of limited value. The results of the checks may also favor people who can afford legal services to avoid convictions. The timing of checks is also critical. These details would need to be identified in the implementation strategy, including consideration of who pays for the checks. Additional resources will be required.</p>

Recommendation 4. **Agencies and programs with significant risk exposure should reach out to victims and communities.**

In order to carry out this goal, agencies should implement the following supporting recommendations:

Recommendation 4.1 **The agency involved in a loss should consider visiting the victims and/or family members to express regret and consider offering services that might aid them in dealing with the situation.**

Directed to:	Agency executives and program managers, Office of Risk Management, and Attorney General's Office.
Benefits:	Helps to put a "human face" on government, shows that compassion <i>is</i> present, and does not let the intimidation of litigation interfere with contacts that should be made.
Implementation Considerations:	Criteria for when a visit should be conducted and who should attend should be established. People who are actually going on the visits should be appropriately trained on how to handle these difficult

situations, especially how to be sensitive to the victims and/or family members. A process should be developed for making these decisions, and how to conduct such a delicate and sensitive visit. Such staff should not focus on or discuss liability or fault or otherwise create admissions against interest.

Recommendation 4.2 **Involve employees and members of communities served and their advocates to help address service delivery risk mitigation.**

Directed to: Agency Executives and Program Managers, and Office of Risk Management.

Benefits: Provides important feedback into the process and also elicits and utilizes community and volunteer resources for risk mitigation. Also helps educate communities about service expectations, limitations, resource requirements, and inherent risks.

Implementation Considerations: Would require involvement of agency public relations or information staff and a coordinated effort among agencies to provide consistency in requests to the community, and to leverage community resources for more than one purpose or program. For example, "community watch" programs may be expanded to include more than crime notification, but would need to be coordinated with other agencies and/or local jurisdictions and programs.

Recommendation 5. **Executive agencies, OFM and the Legislature should jointly develop mechanisms to assist and inform the Legislature about risks associated with new laws and lessons learned from incidents and cases.**

In order to carry out this goal, the Legislature, OFM and executive agencies should implement the following supporting recommendations:

Recommendation 5.1 **Develop a legislation drafting guide that focuses appropriate attention on the risk implications of language in bills.**

Directed to: Legislature, in consultation with interested parties, and Attorney General's Office.

Benefits: Provides more guidance for consideration of risks when drafting legislation language, and helps avoid unintended risk exposure.

Implementation Considerations: Will require collaboration with the state's attorneys and the Legislature to provide practical guidance.

Recommendation 5.2 Require risk management notes on proposed legislation.

Directed to:	Office of Financial Management, Office of Risk Management, Legislature and Agencies.
Benefits:	Provides information to policy makers about risks associated with new laws. Allows them to make more informed decisions, increases accountability at the source of program creation or change, and educates the public about inherently risky services.
Implementation Considerations:	Implementing or changing a program with known risks and insufficient mitigation strategies and resources may expose the state to increased liability. The content contained in the risk note would have to be decided, including issues such as what other agencies (i.e., local governments) might be affected related to risk exposure. Implementation considerations would include addressing questions such as: Are the total costs of risks included? Is this simply a narrative of the potential risks that could occur? Are the costs of risk mitigation outlined here? Are these costs contained in the fiscal notes?

Recommendation 5.3 The Office of Risk Management, with appropriate agency and Attorney General's Office participants, should brief legislative appropriation committees on a regular basis on significant tort claims and litigation, and as needed on payments of an extraordinary nature.

Directed to:	Office of Risk Management's Agency Director or Deputy Director, and Manager, appropriate agency participants, Attorney General's Office, and Legislature.
Benefits:	Informs the Legislature about program risks, lessons learned from incident reviews, patterns in claims and litigation, and potential and actual payouts.
Implementation Considerations:	Frequency of briefings, content of briefings, and confidentiality considerations for litigation in progress would need to be addressed.

Appendix A

Risk Management Task Force Charter

Context:

Introduction and scope of Washington State Risk Management Task Force:

Introduction

State agencies provide a wide array of services to the public, including social services, transportation, law enforcement, recreation and general government services. In providing such services, it is the goal of the state government to promote public safety and avoid injury or harm to its citizens.

In recent years, the financial responsibility of the state for tort payouts in cases where the state has been found negligent has increased dramatically. Not only does this cause concern over human costs and how services are delivered, but it also requires liability funding which significantly impacts the state's budget at a time when increasing demands are coupled with severe resource constraints. This initiative is undertaken to ensure that the state delivers services in a manner that best protects its citizens from harm or injury and that the state engages in the most effective risk management possible, given the difficult program and service areas managed by state government.

Initiative Scope

Governor Gary Locke and Attorney General Christine Gregoire are sponsoring this risk management initiative. The overall strategy includes: (1) aggressively assessing statewide risk management practices, focusing on loss prevention (mitigating risks at service delivery); (2) comparing Washington's tort environment with other entities (3) developing a clear record of appropriate diligence by state government in risk management; (4) implementing enduring risk mitigation strategies; and (5) laying the foundation for recommended policy changes by the Executive and Legislative Branches through education and analysis of the contributing causes to the state's tort liability. This initiative includes the creation of a Risk Management Task Force to provide guidance and recommendations for improvements, and a review of five state agencies' service delivery risk management practices to provide a baseline understanding of the statewide risk management environment. An implementation strategy will focus on follow-through to ensure lasting results.

There are five risk management questions this study will answer.

1. What are the attributes of state government programs/services that have high risk exposure?
2. How can various agencies operate within those programs/services in a manner that mitigates risk exposure, while still delivering the most effective and useful services?
3. What are the roles of the influencing entities and how are agency/statewide risks currently managed?

4. What factors external to the agency operating environment contribute to the state's risk exposure?
5. Is the current risk management funding mechanism meeting its intent to promote accountability and incentive for controlling risks?

Success

This review will be successful when these questions are answered, and there is agreement among the Sponsors and Task Force on how to move forward with improvements. Specific success measures and follow-up for enduring risk management improvements will be developed with the recommendations at the conclusion of the review.

Purpose of Risk Management Task Force:

The Risk Management Task Force is convened to provide diverse and informed perspectives, and guidance and recommendations for improving Washington State's risk management practices.

Roles and Responsibilities:

▪ **Risk Management Task Force**

Members of the Risk Management Task Force are expected to:

- Attend Task Force meetings,
- Champion the initiative and help educate other stakeholders,
- Receive background on the history of the state's risk management processes and environment,
- Review/receive presentations on results of state risk management review, and
- Discuss and provide recommendations and guidance to the Governor and Attorney General related to improvements in risk management practices.

Attorney General's Office

The Attorney General's Office will actively participate in the Task Force, recruit and communicate with the participating agencies, provide staff work and data as necessary, decide on recommendations of the Task Force, and direct the consultant resources.

Participating Agencies

Selected state agencies will participate in the risk management reviews by making management and staff available for interviews, requested information, and suggestions for risk management improvements.

Sterling Associates, Ltd.

Sterling Associates will provide consulting, support and assistance to the Task Force including: preparing Task Force meeting materials, proposing a methodology and approach for assessing agency risk management programs and practices, conducting a baseline sample review of risk management practices, and making recommendations for risk management program improvements and next steps.

Membership of Risk Management Task Force:

Sponsors: Governor Gary Locke and Attorney General Christine Gregoire

Co-Chair: Christine Gregoire, Attorney General

Co-Chair: Sue Donaldson, Daniel J. Evans School of Public Affairs and the Law
School, University of Washington

Member: Representative Gary Alexander

Member: Senator Betti Sheldon

Member: Senator Jeralita Costa

Member: Marty Brown, Director, Office of Financial Management

Member: Joe Lehman, Secretary, Department of Corrections

Member: Dennis Braddock, Secretary, Department of Social and Health Services

Member: Marsha Tadano Long, Director, Department of General Administration

Member: Bill Henselman, Risk Manager, Department of Transportation

Member: William B. Reisbick, Systems Director, Risk Management of
Providence Health System

Member: Dick Thompson, Director of Government Relations, University of
Washington

Member: Kim Abel, President, Kitsap County League of Women Voters

Member: Janet Rice, Attorney - Schroeter, Goldmark & Bender, P.S.

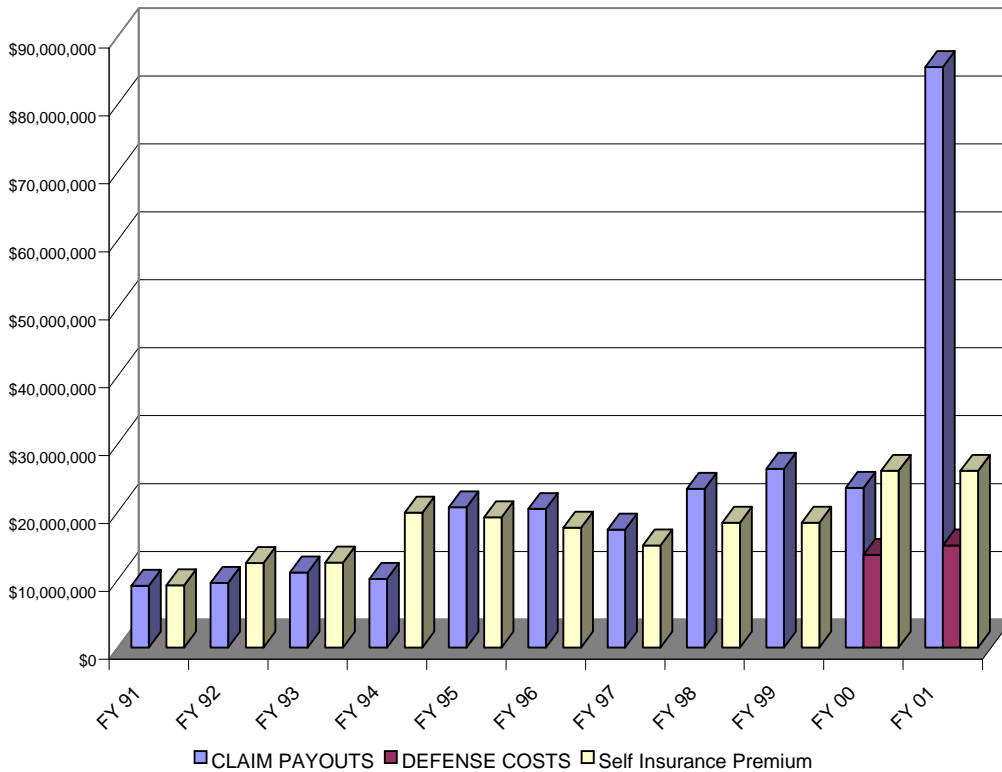
Member: Peter Ehrlichman, Attorney - Foster Pepper

Appendix B

Tort Payouts

(Information supplied by the Department of General Administration, Office of Risk Management)

Tort Claim Payouts - FY 1991 - 2001



FISCAL YEAR	CLAIM PAYOUTS	DEFENSE COSTS	TOTAL PAID	Self Insurance Premium
FY 91	\$9,096,655.98		\$9,096,655.98	\$9,163,147.00
FY 92	\$9,493,765.14		\$9,493,765.14	\$12,410,331.00
FY 93	\$11,036,423.96		\$11,036,423.96	\$12,497,424.00
FY 94	\$10,090,693.61		\$10,090,693.61	\$19,837,472.00
FY 95	\$20,621,207.66		\$20,621,207.66	\$19,140,643.00
FY 96	\$20,374,873.44		\$20,374,873.44	\$17,609,051.00
FY 97	\$17,334,128.67		\$17,334,128.67	\$15,020,119.00
FY 98	\$23,358,916.18		\$23,358,916.18	\$18,352,095.00
FY 99	\$26,295,926.44		\$26,295,926.44	\$18,352,095.00
FY 00	\$23,492,398.88	\$13,619,342.22	\$37,111,741.10	\$26,000,004.00
FY 01	\$85,424,636.76	\$15,031,293.92	\$100,455,930.68	\$26,000,004.00
TOTAL	\$256,619,626.72	\$28,650,636.14	\$285,270,262.86	\$194,382,385.00

Defense Costs do not include June 2001 expenditures. Defense Costs for the 1999-2001 Biennium totalled \$30.8 million. Self Insurance Premium does not include Defense Costs. Excludes reimbursements for covered insurance claims from Excess Policy.

Tort Payouts \$100,000 and above, 8/01/2000 through 3/21/2001

AGENCY	LOSS DATE	ALLEGATIONS AS INDICATED IN CLAIM	\$ PAID
DSHS	9/27/1994	ABUSED IN ADULT FAMILY HOME	18,865,074.92
DSHS	9/1/1984	FAILURE TO ACT UPON ABUSE ALLEGATIONS	8,800,000.00
DOC	9/28/1997	SUPERVISION - PAROLEE CRIME	8,800,000.00
DSHS	7/1/1986	OK BOYS RANCH 4 SETTLEMENT (13 CLAIMS)	7,500,000.00
PARKS/DO	7/6/1996	POOR LIGHTING/DAMAGED FENCE LED TO VISITOR INJUF	5,000,000.00
DSHS	3/1/1994	ABUSE IN ADULT FAMILY HOME	2,250,000.00
DOT	4/28/1996	MEDICAL ACCOMODATION CLAIM - WSF EMPLOYEE	2,200,000.00
DSHS	8/1/1995	ABUSE IN FOSTER CARE	800,000.00
DOT	12/1/1994	ACCIDENT WITH STATE DRIVER	750,000.00
DOT	2/1/1998	DESIGN INTERSECTION CAUSED ACCIDENT	700,000.00
DSHS	11/1/1995	FAILED TO INVESTIGATE ABUSE COMPLAINTS	525,000.00
DSHS	6/24/1994	ALLEGED ASSAULT BY EMPLOYEE AT FACILITY	525,000.00
DOT	7/1/1989	HEARING LOSS-DECKHAND - FERRY EMPLOYEES	510,600.00
DSHS	8/4/1992	RETURNED TO ABUSIVE HOME	500,000.00
DOT	12/26/1994	STANDING WATER ON ROADWAY CAUSED ACCIDENT	475,000.00
DSHS	6/1/1996	ASSAULTED BY FELLOW RESIDENT	435,000.00
DOC	3/10/1993	SUPERVISION - PAROLEE CRIME	425,000.00
DSHS	8/1/1997	PERSONAL INFO IMPROPERLY GIVEN ABOUT ADOPTIVE F	350,000.00
DOT	12/15/1994	EMPLOYMENT CLAIM	320,000.00
DSHS	4/4/1995	NOT PROVIDED WITH ADEQUATE MEDICAL CARE - SPEC (308,059.76
DSHS	1/12/1993	EMPLOYMENT CLAIM	294,832.07
DSHS	3/1/1998	ABUSE IN PRE-ADOPTION PLACEMENT	275,000.00
DSHS	12/1/1996	EMPLOYMENT CLAIM	250,000.00
DOC	3/17/1995	EMPLOYMENT CLAIM	250,000.00
DOT	5/24/1996	HEAVY OBJECT FELL OFF SHELF ONTO CLAIMANT - WSF I	250,000.00
DOC	7/18/1998	MEDICAL MALPRACTICE	245,000.00
DSHS	10/10/1994	ABUSED IN PLACEMENT CARE	225,000.00
DOT	5/12/1996	PEDESTRIAN SLIP/FALL	219,964.91
DSHS	8/8/1995	EMPLOYMENT CLAIM	200,000.00
WSU	2/6/1996	SLIP/FALL	200,000.00
DSHS	5/6/1994	ASSAULT IN FOSTER HOME	180,000.00
WSP	12/27/1993	ASSAULT BY EMPLOYEE	150,000.00
DOT	4/15/1994	EMPLOYMENT CLAIM	128,000.00
CTED	2/18/1998	EMPLOYMENT CLAIM	125,000.00
DSHS	5/1/1995	ASSAULT AFTER PLACEMENT IN HOME	125,000.00
DSHS	1/1/1994	IMPROPER CLOSURE AND HARASSMENT AT DAY CARE C	125,000.00
DSHS	2/1/1992	IMPROPER INVESTIGATION OF ALLEGED ABUSE	123,500.00
DSHS	6/1/1997	ASSAULT IN FOSTER HOME	120,000.00
DOT	12/20/1998	VALVE HANDLE BROKE CAUSING BACK INJURY - WSF EMI	120,000.00
DOC	10/1/1993	EMPLOYMENT CLAIM	108,845.56
WSP	5/10/1997	ACCIDENT WITH STATE DRIVER	100,000.00
WSP	12/20/1998	ACCIDENT WITH STATE DRIVER	100,000.00
DSHS	7/1/1995	CONTRACTED MEDICAL CONDITION/INADEQUATE PROCE	100,000.00
DSHS	7/1/1996	ASSAULT IN FOSTER HOME	100,000.00
1,082 PAYMENTS = 69,600,698.39 (As of 3/21/01)			44 PAYMENTS \$100k 64,153,877.22

Information Submitted by: State Office of Risk Management